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Trade Policy Monitoring

Second WTO rejection in the banana dispute

2005

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Report Highlights:

On October 27 2005, the World Trade Organization Arbitrator issued a second award in the banana dispute, rejecting for the second time the European Commission import tariff proposal on bananas. The Arbitrator determined that the European Communities' proposed remedy, consisting of a new MFN (most favored nations) tariff rate on bananas of €187 per metric ton, and a 775,000 mt tariff quota on imports of bananas of ACP origin, would not result "in at least maintaining total market access for MFN banana suppliers". As a result, the WTO Arbitrator found that the European Communities had failed to properly rectify the situation.

Includes PSD Changes: No
Includes Trade Matrix: No
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BACKGROUND

The current banana situation is very complex, with a long history that goes back to well before 1995, the first year of the WTO. In September 1995, the US, Guatemala, Mexico, and Honduras requested formal consultations with the EU, challenging the European import regime that gave preferences to banana imports from its former colonies, and preferential licenses to European banana importers. Ecuador later joined the WTO dispute. The EU lost the case before the WTO Dispute Settlement Body, and in 1999 the US imposed 100 percent tariffs on a list of eight items representing \$191.4 million in imports from the EU. In 2001, the EU reached an agreement with the US and Ecuador to implement a new tariff regime by January 1, 2006. The agreement stipulated that the WTO would rule on whether the new levy "would result in at least maintaining total market access." If not, the EU would have to "rectify the matter."

In this latest decision, the Arbitrator upheld same determination of the first award, made on August 4, 2005. At that time, the Arbitrator noted that "in the absence of a mutually satisfactory solution, the same arbitrator will be asked to determine, within 30 days of the new arbitration request, whether the EC has rectified the matter".

On September 26, 2005, after three rounds of consultations with trading partners, the EU submitted a further request for arbitration. The current decision does not directly address the question of legality of a "tariff-only" regime, or how the Everything But Arms ("EBA") Initiative could potentially affect the competitive situation of MFN banana suppliers. The WTO opinion is only intended to address the specific question of whether the new proposed tariff rate of €187 per metric ton, and the 775,000 import quota maintains total market access for MFN banana suppliers.

In the first decision, the WTO Arbitrator found that the standard price gap formula calculation did not properly account for the potential impact of the increase in the margin of preferences, referring mainly to the reference period and the external price. In its most recent proposal, the European Communities calculated its proposed rectification on the basis of an updated *reference period*, namely January 2002 to April 2004. The Commission also utilized internal price data, gathered from Sopisco News, a weekly publication used in the shipping and reefer industry. However, the Arbitrator explicitly noted that the prices, which were previously based on Eurostat data, were not in dispute, thus implying that the EU may have underestimated the external price. In addition, interested parties in the case have raised serious concerns with respect to the EU's simulation model – specifically citing errors in the values of EU demand, ACP supply elasticities, and also trade transportation costs).

With this recent ruling, the European Commission is both surprised and disappointed. Although they regret that the arbitrators did not provide more clarity on how to resolve this long-standing dispute. The Commission has already pledged to study carefully the implications of the WTO decision.

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